

State of Wisconsin



1997 Senate Bill 329

Date of enactment: **April 27, 1998**
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1997 WISCONSIN ACT 173

AN ACT *to amend* 40.25 (2), 40.25 (2m), 61.66 (2), 111.35 (4) and 891.45; and *to create* 40.25 (2t), 40.65 (7) (ar) and 891.455 of the statutes; **relating to:** presumption concerning employment-connected disease for certain municipal fire fighters.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 40.25 (2) of the statutes is amended to read:

40.25 (2) If ~~Subject to subs. (2m) and (2t), if~~ all requirements for payment of a retirement annuity are met except attainment of age 55 or age 50 for protective occupation participants, a separation benefit may be paid, if the participant's written application for a separation benefit is received by the department prior to the participant's 55th birthday or 50th birthday for protective occupation participants, in an amount equal to the additional and employee required contribution accumulations of the participant on the date the application for a separation benefit is approved.

SECTION 2. 40.25 (2m) of the statutes is amended to read:

40.25 (2m) ~~Notwithstanding sub. (2), if~~ If a participant who is initially covered under the Wisconsin retirement system on or after January 1, 1990, terminates employment and does not have creditable service in at least 5 calendar years, a separation benefit may be paid if the participant submits a written application to the department for a separation benefit in an amount equal to the additional and employee required contribution accumulations of the participant on the date that the application for

a separation benefit is approved. For the purposes of this subsection there are no age requirements for receiving a separation benefit.

SECTION 3. 40.25 (2t) of the statutes is created to read:

40.25 (2t) A protective occupation participant who is covered by the presumption under s. 891.455 and who applied for a duty disability benefit under s. 40.65 on or after the effective date of this subsection [revisor inserts date], may not be paid a separation benefit under sub. (2) or (2m) during the period in which he or she is receiving the duty disability benefit.

SECTION 4. 40.65 (7) (ar) of the statutes is created to read:

40.65 (7) (ar) 1. This paragraph applies to benefits based on applications filed on or after the effective date of this subdivision [revisor inserts date]. If a protective occupation participant, who is covered by the presumption under s. 891.455, dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

a. To the surviving spouse until the surviving spouse remarries, if the surviving spouse was married to the participant on the date that the participant was disabled under sub. (4), 70% of the participant's monthly salary at the

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

time of death, but reduced by any amount payable under sub. (5) (b) 1. to 6.

b. If there is no surviving spouse or the surviving spouse subsequently dies, to a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first.

2. Benefits payable under this paragraph shall be increased each January 1 by the salary index determined for the prior year.

SECTION 5. 61.66 (2) of the statutes is amended to read:

61.66 (2) The governing body of a village acting under sub. (1) may designate any person required to perform police protection and fire protection duties under sub. (1) as primarily a police officer or fire fighter for purposes of s. 891.45 or 891.455.

SECTION 6. 111.35 (4) of the statutes is amended to read:

111.35 (4) Notwithstanding s. 111.322, it is not employment discrimination because of use of a lawful product off the employer's premises during nonworking hours to refuse to employ an applicant if the applicant's use of a lawful product consists of smoking tobacco and the employment is as a fire fighter covered under s. 891.45 or 891.455.

SECTION 7. 891.45 of the statutes is amended to read:

891.45 (title) ~~Presumption of employment connected employment-connected disease; heart or respiratory impairment or disease.~~ In any proceeding involving the application by a municipal fire fighter or his or her beneficiary for disability or death benefits under s. 66.191, 1981 stats., or s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled municipal fire fighter had served a total of 5 years as a municipal fire fighter and a qualifying medical examination given prior to the time of

his or her joining the department showed no evidence of heart or respiratory impairment or disease, and where the disability or death is found to be caused by heart or respiratory impairment or disease, such finding shall be presumptive evidence that such impairment or disease was caused by such employment. In this section, "municipal fire fighter" includes any person designated as primarily a fire fighter under s. 61.66 (2) and any person under s. 61.66 whose duties as a fire fighter during the 5-year qualifying period took up at least two-thirds of his or her working hours.

SECTION 8. 891.455 of the statutes is created to read:

891.455 Presumption of employment-connected disease; cancer. (1) In this section, "municipal fire fighter" means a municipal fire fighter who is covered under s. 891.45 and any person under s. 61.66 whose duties as a fire fighter during the 10-year qualifying period specified in sub. (2) took up at least two-thirds of his or her working hours.

(2) Beginning with applications submitted by a municipal fire fighter or his or her beneficiary on the effective date of this subsection [revisor inserts date], in any proceeding involving an application by a municipal fire fighter or his or her beneficiary for disability or death benefits under s. 66.191, 1981 stats., or s. 40.65 (2) or any pension or retirement system applicable to fire fighters, where at the time of death or filing of application for disability benefits the deceased or disabled municipal fire fighter had served a total of 10 years as a municipal fire fighter and a qualifying medical examination given prior to the time of his or her joining the department showed no evidence of cancer, and where the disability or death is found to be caused by cancer, such finding shall be presumptive evidence that the cancer was caused by such employment.

(3) The presumption under sub. (2) shall only apply to cancers affecting the skin, breasts, central nervous system or lymphatic, digestive, hematological, urinary, skeletal, oral or reproductive systems.